IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Submitted on Briefs October 26, 2006

IN RE HIGH PRESSURE LAMINATE ANTITRUST LITIGATION

Appeal from the Circuit Court for Davidson County
No. 01-MD-1 Marietta Shipley, Judge

No. M2005-01747-COA-R3-CV - Filed on December 13, 2006

This is a class action involving antitrust claims brought by indirect purchasers of high pressure laminates (HPL) and products containing HPL in twelve states and the District of Columbia. Following extensive discovery and negotiations, settlements were reached between the settling Plaintiffs and several of the Defendants: International Paper Company, Panolam Industries International, Inc., and Pioneer Plastics Corporation. Four individual Tennessee Plaintiffs filed objections to the settlements, arguing that the trial court should not approve them because the settlements allocate benefits in a population-based approach without regard to the alleged differences in the antitrust laws of the various states. The trial court approved the settlements, finding them fair, reasonable, and adequate under the circumstances. We agree with the trial court that the settling parties were not required to reach an agreement using an approach that analyzes and takes into consideration all of the various differences in state antitrust laws and that allocates benefits accordingly. We affirm the judgment of the trial court approving the settlements over the individual Plaintiffs' objections.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

John B. Enkema, Nashville, Tennessee, for the Appellants, Autumn and David Manning, Lance McKerley, and Natasha Holt.

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Bulges, Portland, Maine; David M. Foster, Farmington Hills, Michigan; Mark G. Wermerskirchen, Willmar, Minnesota; Michael R. Comeau, Jeffrey R. Brannen, Santa Fe, New Mexico; Allan R. Tarleton, Asheville, North Carolina; Michael S. Montgomery, Fargo, North Dakota; Michael D. Bornitz, Sioux Falls, South Dakota; John C. Skinner, Jr., Charles Town, West Virginia; Robert C. Gilbert, Coral Gables, Florida, for the Appellees, settling Plaintiffs.

Paul A. Alexis, James A. DeLanis, Andree Blumstein, and R. Dale Grimes, Nashville, Tennessee; Michael L. Denger, Daniel W. Nelson, and Paul A. Allulis, Washington, D.C.; Thomas Gallatin, New York, New York, for the Appellees, settling Defendants International Paper Company, Panolam Industries International, Inc., and Pioneer Plastics Corporation.

OPINION

I. Background

This class action was filed on July 14, 2000 on behalf of indirect purchasers of HPL in Tennessee, alleging that the Defendants had engaged in a continuing agreement, understanding and conspiracy in restraint of trade to artificially raise, fix, maintain, or stabilize prices for HPL in the United States. Similar indirect purchaser class actions were filed in other states. Direct purchaser class actions were also filed in federal court and consolidated by the Judicial Panel on Multi-District Litigation for proceedings in the U.S. District Court for the Southern District of New York. The settling Defendants involved in this action reached settlements with the plaintiffs in the consolidated federal direct purchaser class actions, and the U.S. District Court granted those settlements final approval in 2004.

In this case, Plaintiffs' Co-Lead Counsel and the settling Defendants[1] concluded that considerations of economy and efficiency justified a consolidated approach to settlement in the thirteen jurisdictions, and agreed that the Circuit Court for Davidson County, Tennessee, would serve as the Supervising Court and would initially review the settlement agreements. The Plaintiffs reached two separate settlement agreements with Defendant International Paper Company and Defendants Panolam Industries International, Inc. and Pioneer Plastics Corporation; for practical purposes and as pertinent to the issue presented here, the agreements contain the same terms and no reason is presented to distinguish them in our analysis. Pursuant to the agreements, International Paper Company agreed to pay $4,000,000, and Panolam Industries International, Inc. and Pioneer Plastics Corporation agreed to pay $1,225,785, in settlement of the class actions. The parties further agreed that the net settlement fund benefits would be allocated based on the census populations of the settling states.

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[1] Not all of the named Defendants have agreed to settle the case. According to the brief of the Appellee Settling Plaintiffs and Settling Defendants, the settlements at issue here "preserve all claims against the two Non-Settling Defendants – including, by far, the largest seller of HPL during the period of the alleged conspiracy – which remain jointly and severally liable for all damages, including those arising from indirect sales of HPL and sales of HPL-containing products made with HPL originally sold by the Settling Defendants."

Following preliminary approval of the settlement agreements by the Tennessee Supervising Court, courts in the other twelve jurisdictions preliminarily approved the fairness, reasonableness, and adequacy of the settlements, and the adequacy of the notice to potential Class members in their respective jurisdictions. No Class member elected to opt out of the settlements, and no objection to the settlements was filed by any Class member in any settling state other than Tennessee. Subsequently, the courts in the other twelve jurisdictions granted final approval to the settlement agreements, and entered final judgment ending the litigation in those states. As noted, four Plaintiffs came forward in Tennessee to object--Autumn and David Manning, Lance McKerley, and Natasha Holt. After a hearing at which the trial court heard and considered the objectors' arguments, the trial court overruled the objections and granted final approval to the settlements.

II. Issue Presented

The objectors appeal. A sole issue is presented for our review: whether the trial court erred in approving the settlement agreements as fair, reasonable, and adequate, when the agreements allocate the settlement proceeds among the Plaintiffs in the settling states according to a population-based approach, without regard to the differences in the laws of the settling states regarding antitrust actions brought by indirect purchasers.

III. Standard of Review

The parties do not dispute that this Court reviews a trial court's approval of a settlement under the abuse of discretion standard. *See Cummings v. Patterson*, 388 S.W.2d 157, 167 (Tenn. Ct. App. 1964). In *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001), the Tennessee Supreme Court stated as follows regarding the abuse of discretion standard:

> Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to the propriety of the decision made." *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000). A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

An abuse of discretion occurs when the lower court's decision is without a basis in law or fact and is, therefore, arbitrary, illogical or unconscionable. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191 (Tenn. 2000).

IV. Analysis

Pursuant to Tenn. R. Civ. P. 23.05, the trial court must approve any voluntary dismissal or compromise agreement of a class action. In this case, the objecting Plaintiffs do not challenge the adequacy of notice provided to potential Class members, nor the adequacy or reasonableness of the overall settlement amounts. Their sole objection is that the agreed-upon method of allocation of settlement benefits fails to take into account the differences in state laws regarding antitrust actions brought by indirect purchasers, instead utilizing a population-based approach of allocation. Objecting Plaintiffs argue that the law in Tennessee is more favorable to them than in several of the other jurisdictions, and thus provided them a greater chance of recovery, should the case have gone to trial. Therefore, they argue, the settlement agreements should have allocated a larger percentage of the settlement proceeds to Tennessee Class members.

After a hearing at which objecting Plaintiffs presented this argument, the trial court approved the settlement agreements, reasoning as follows:

> As to [the] objection as to the proportionate allocation of the Settlement, this Court finds that any differences among the states are not so significant as to make a population-based allocation unreasonable.
>
> First, a population-based allocation in a similar indirect purchaser class action involving the same 13 jurisdictions as are involved here (and 10 others) was finally approved by the trial court in each of these jurisdictions in the *Vitamins* litigation.[2] Moreover, the *Vitamins* settlement and the population-based allocation embodied therein was negotiated with the active participation of the state attorneys general, who supported a population-based allocation among the participating states.
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> Second, the trial courts of the 13 jurisdictions participating in this Settlement all preliminarily approved a population-based settlement.
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> Third, Class Counsel for the Settlement Classes in *each* of the jurisdictions concurred in the population-based allocation.
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> Fourth, use of a population-based approach to settlement is a reasonable, objective means of allocating global, multi-state settlements by avoiding endless disputes over subjective judgments about which jurisdiction's law is stronger and, in which respects, and how to quantify any such differences, all of which would make multi-

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[2] *See, e.g., Boyle v. Giral,* 820 A.2d 561 (D.C. 2003).

> state settlements more difficult to achieve. The Objectors do not contest the overall fairness and adequacy of the Settlement, and this Court finds the population-based allocation to be reasonable and consistent with the judicial and public policies in favor of encouraging and facilitating settlements.

(Paragraphs and footnote added). The trial court concluded that the proposed settlement agreements were "in all respects fair, reasonable, adequate and proper and in the best interests of the Tennessee and other Settling States' Class Members, given the benefits and certainty of settlement, the risks, complexity, expense, and probable lengthy duration of further litigation, the failure of the Antitrust Division of the U.S. Department of Justice to take any enforcement action against Settling Defendants after a two-year investigation (which investigation has been closed), and the absence of any objection to the overall Settlement Amount paid to the Classes in Tennessee and the other Settling States."

We agree with the reasoning and judgment of the trial court. In reaching this conclusion we bear in mind that "settlement agreements ... are favored by the courts and represent the achievement of an amicable result to pending litigation." *Petersen v. Genesis Learning Centers*, No. M2004-01503-COA-R3-CV, 2005 WL 3416303, at *4 (Tenn. Ct. App. M.S., Dec. 13, 2005) (citing *In re Estate of Jones*, 154 S.W.3d 582, 584 (Tenn. Ct. App. 2004). It has long been the public policy of Tennessee to support and favor settlement agreements in compromise of litigation. *Alexander v. Rhodes,* 474 S.W.2d 655, 659 (Tenn. Ct. App. 1971); *Third Nat'l Bank v. Scribner*, 370 S.W.2d 482, 487 (Tenn. 1963) ("The policy of the law is to favor compromise"); *Emmco Ins. Co. v. Beacon Mut. Indemnity Co.*, 322 S.W.2d 226, 230 (Tenn. 1959) ("The law favors compromises"); *Silliman v. International Life Ins. Co.,*188 S.W. 273, 274 (Tenn. 1916) ("Indeed, the law encourages honest efforts to compromise differences").

We believe that to accept Objecting Plaintiffs' argument, thereby creating a judicial requirement that parties to a multi-state class action must consider alleged differences in state laws and the potential effects thereof, in their negotiation and settlement process, would discourage settlements of these cases. Such a requirement would inject another potentially extremely complicated (and costly) layer of analysis and negotiation into an already complex area of law. *See Freeman Industries, LLC v. Eastman Chemical Co.,* 172 S.W.3d 512, 520 (Tenn. 2005) (Noting "[a]ntitrust, however, is a complex area of law and generally involves highly complex litigation"). There is nothing wrong with a decision by negotiating parties to undertake such an approach, and crafting an agreement that allocates settlement benefits in the way Objecting Plaintiffs suggest; but such an approach is clearly not *required* in order to obtain a court's approval. As the trial court noted, the population-based method of allocation agreed upon by the Settling Parties serves to avoid "endless disputes over subjective judgments about which jurisdiction's law is stronger and, in which respects, and how to quantify any such differences."

Further, at least one federal district court has considered and rejected the argument made by Objecting Plaintiffs in this case, approving a multi-state class action settlement over the objection that it "(1) fails to distinguish between states that allow indirect purchasers to recover antitrust damages and those that do not, and (2) fails to distinguish between Tennessee, which [the objector] argues allows recovery for full consideration paid by the consumer, and states that so not allow such recovery." *In re Cardizem CD Antitrust Litigation*, 218 F.R.D. 508, 529 (E.D. Mich. 2003). Objecting Plaintiffs cite another federal case, *In re Relafen Antitrust Litigation*, 221 F.R.D. 260 (D. Mass. 2004) as an example of a court utilizing an approach considering the various state antitrust laws and analyzing the differences between them. While we have no quarrel with the approach taken by the *Relafen* court, we simply hold that it is not required in order for a court to approve a class action settlement. Further, the *Relafen* court was not presented with the question of whether to approve a settlement agreement, but rather whether to grant a motion for class certification. *Id.*

In this case, the trial court properly considered and examined the settlement agreements for fairness, reasonableness, and adequacy, and found that they merited approval. As the trial court noted, Plaintiffs' Co-Lead Counsel, "after vigorous investigation of the claims, negotiated the Settlement[s] with the Settling Defendants in good faith and at arm's length over an extended period of time. PCLC had access to the voluminous documents and discovery produced in the related federal direct purchaser class action, as well as numerous depositions conducted therein. Counsel representing all Settling Parties were experienced."

The favorable response by the great majority of Class Members in this case to the settlement agreements, and the very small number of objectors relative to the overall class size, also militates in favor of the conclusion that the settlements are fair and reasonable. As we have stated, no Class Member in any state elected to opt out of the settlements. Of the thirteen jurisdictions involved in this litigation, only four Plaintiffs in Tennessee filed an objection to the settlements. Courts in eleven states and the District of Columbia have already finally approved the settlements as related to Class Members in their respective jurisdictions. "A favorable reception by the Class constitutes 'strong evidence' of the fairness of a proposed settlement and supports judicial approval. . .In particular, 'the absence of objectants may itself be taken as evidencing the fairness of a settlement.'" *In re PaineWebber Ltd. Partnerships Litigation*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) *aff'd*, 117 F.3d 721 (2d Cir. 1997); *see also Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1378 (9th Cir. 1993); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3rd Cir. 1990); *In re Orthopedic Bone Screw Prod. Liab. Litigation*, 176 F.R.D. 158, 185 (E.D.Pa. 1997) ("What is meaningful in this regard is that the relatively low objection rate 'militates strongly in favor of approval of the settlement'").

V. Conclusion

For the aforementioned reasons, the judgment of the trial court approving the settlement agreements is affirmed. Costs on appeal are assessed to the Appellants, Autumn and David Manning, Lance McKerley, and Natasha Holt.

SHARON G. LEE, JUDGE